

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA,
WHEELING DIVISION**

PROGRESSIVE MINERALS LLC.,	§
	§
Plaintiff,	§ CASE NO. 5:07-CV-108
V.	§
	§
MUHAMMAD HAROON RASHID, GERALD D. HENDRIX, DAVID M. BERNSTEIN, and JUDE O'NURKERA	§
	§
Defendants.	§

**PROGRESSIVE MINERALS' MOTION IN LIMINE TO PRECLUDE
DEFENDANT DAVID M. BERNSTEIN FROM PRESENTING EVIDENCE**

Pursuant to this Court's Scheduling Order, and Rule 37 of the Federal Rules of Civil Procedure, Progressive Minerals respectfully requests that the Court preclude Defendant David M. Bernstein from presenting any evidence at the trial of this action. Progressive Minerals has filed a similar motion, a Motion for Default Under Rule 37 Against David M. Bernstein (Doc. No. 78), in which a similar argument was made in the alternative, and it incorporates that Motion and the factual statement and arguments made therein. It files this motion to the extent necessary to comply with the Court's Scheduling Order. Because Defendant Bernstein has refused to answer discovery requests, refused to appear for his deposition on two occasions, and refused to appear at any scheduled hearings in this case, and for the reasons stated more fully in the Motion for Default, if that motion is denied, Progressive Minerals requests that David M. Bernstein be precluded from presenting any evidence at trial.

Dated: September 17, 2009

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been filed electronically, with service on the following on September 17, 2009, via first class mail, postage prepaid.

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/s/ Jacob A. Manning
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